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May 15, 2015

**VIA UPS DELIVERY**

Illinois Commerce Commission  
Clerk's Office  
527 E. Capitol Ave.  
Springfield, IL 62701

Mr. Torsten Clausen  
Illinois Commerce Commission  
160 N. LaSalle, Suite C-800  
Chicago, IL 60601

Illinois Commerce Commission  
Clerk's Office  
160 N. LaSalle, Suite C-800  
Chicago, IL 60601

**RE: Illinois Commerce Commission Notice of Inquiry (ICC No. 14-NOI-01)  
Joint Verified Fourth Round Comments of the  
Coalition of Energy Suppliers and the National Energy Marketers Association**

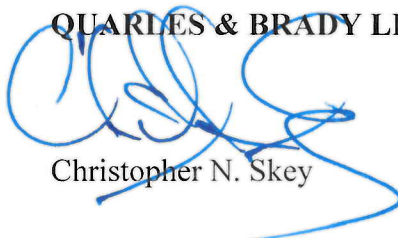
Dear Clerk's Office Springfield, Clerk's Office Springfield, and Mr. Clausen:

Enclosed please find the Joint Verified Fourth Round Comments of the Coalition of Energy Suppliers and the National Energy Marketers Association in response to the April 28, 2015 questions associated with Illinois Commerce Commission's Notice of Inquiry regarding the Illinois retail electric market. Pursuant to the Notice of Inquiry's instructions, enclosed are an original and three copies of the Fourth Round Comments for the Clerk's Office Springfield, four copies for the Clerk's Office Chicago, and four copies for Mr. Clausen. We will also forward Mr. Clausen an electronic version.

As always, if you have any questions, please do not hesitate to call.

Very truly yours,

**QUARLES & BRADY LLP**



Christopher N. Skey

Enclosures

cc: Mr. Craig Goodman (President & CEO of the National Energy Marketers Association)

**BEFORE THE ILLINOIS COMMERCE COMMISSION  
STATE OF ILLINOIS**

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	
	)	<b>14-NOI-01</b>
<b>Notice of Inquiry regarding retail</b>	)	
<b>electric market issues</b>	)	

**JOINT VERIFIED FOURTH ROUND COMMENTS OF  
THE COALITION OF ENERGY SUPPLIERS AND  
THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The Coalition of Energy Suppliers ("CES")<sup>1</sup> and the National Energy Marketers Association ("NEM")<sup>2</sup> respectfully submit the following Fourth Round Comments in response to additional questions posed by the Staff of the Illinois Commerce Commission ("Commission") on April 28, 2015 in connection with the Commission's Notice of Inquiry regarding the Illinois residential retail electric market.

These Comments supplement the Joint Verified Initial Comments, Joint Verified Reply Comments, and Joint Verified Third Round Comments submitted by CES/NEM on November 6, 2014, December 3, 2014, and January 8, 2015 respectively, and the oral comments offered on behalf of CES/NEM at the workshops held on November 13, 2014, December 8, 2014, and January 15, 2015.

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<sup>1</sup> CES is an ad hoc coalition of retail electric suppliers that participate in competitive energy markets in Illinois and throughout the United States.

<sup>2</sup> NEM is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada, and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

## Introduction and Background

The tone and substance of the questions that are the basis for this round of comments seem to improperly assume that there is a "problem" in the Illinois competitive retail electric market that needs to be "fixed." There is no evidence that there is such a problem, and there is no evidence that the existing laws, rules, and regulations are inadequate to address problems that might arise in the future.

CES/NEM's previous Comments highlight the success of the Illinois competitive electricity market and the lack of significant problems relative to the very high level of customer participation. As the Commission's most recent Annual Report indicates, **more than three million Illinois customers participated in the competitive electricity market in 2014.** (*See* Commission 2014 Annual Report on Electricity, Gas, Was and Sewer Utilities, at 12 (reporting that as of October 31, 2014, over 2.7 million residential customers and 312,000 non-residential customers were purchasing electricity from an alternative retail electric supplier ("RES")).)

The competitive market has allowed participating customers to save significant amounts of money, even in recent years when pricing differences between the utility offerings and RES offerings have been fairly limited. For example, the Commission's Office of Retail Market Development ("ORMD") reports that from June 2013 to May 2014, in ComEd's service territory **residential customers have saved approximately \$307 million** over the last two years. (*See* ORMD 2014 Annual Report, at 3.) These savings are part of a longer term savings trend. Since the inception of the Illinois competitive market in 1997, Illinois customers -- from the largest commercial and industrial employers in the state, to thousands of mid-sized commercial and industrial companies and institutions, right down to millions of individual residential customers - - have saved **tens of billions of dollars.** (*See, e.g.,* "Electricity & Natural Gas Customer Choice

in Illinois - A Model for Effective Public Policy Solutions" ("2014 Illinois Study") Feb. 2014, available at [http://www.exeloncorp.com/assets/policy/docs/Illinois\\_Energy\\_Reform\\_Feb2014.pdf](http://www.exeloncorp.com/assets/policy/docs/Illinois_Energy_Reform_Feb2014.pdf).) Of course, some competitive products do not focus on cost savings, but rather offer other significant benefits such as price certainty or green attributes. However, clearly the Illinois competitive market has resulted in enormous aggregate savings for Illinois customers.

The success of the Illinois competitive market is not limited to statistics from Commission reports. Experts on the subject, such as former Commission Chairman Phillip O'Connor in a presentation given at the Chicago Bar Association on May 14, 2015, have identified the successful market mechanisms in Illinois that have saved Illinois consumers billions of dollars, while simultaneously preparing Illinois very well to deal with future change in a range of relevant areas, including environmental rules, stranded cost issues, and modernized regulatory approaches. Dr. O'Connor noted that the updated savings figure under the methodology used in the 2014 Illinois Study has risen from \$37 billion to \$41.3 billion. Dr. O'Connor also presented a sophisticated data study showing that on a variety of different criteria, Illinois ratepayers are in a much better position now than they were at the beginning of the Illinois competitive market, both relative to themselves as well as relative to customers in neighboring Midwestern states.

These successes have been realized through robust market participation by both customers and suppliers, nurtured by balanced regulation from the Commission through implementation of the Public Utilities Act ("PUA") and the Commission's development and enforcement of rules such as the Commission's Part 412 rules that provide the regulatory tools, where needed, to address potential problems or allegations of improper marketing techniques or

RES misconduct. (*See, e.g.*, CES/NEM Initial Comments at 1-3; CES/NEM Reply Comments at 2-3, 5; CES/NEM Third Round Comments at 1-3.) Other parties likewise have noted the market success in Illinois, the lack of significant market problems, and the existing legal and regulatory mechanisms to address any problems or bad actors. (*See* ICEA Initial Comments at 1-3; RESA Initial Comments at 1-5; ICEA Reply Comments at 2-3; RESA Reply Comments at 7-8; ICEA Third Round Comments at 2-3, 15; RESA Third Round Comments at 2-3.)

Given the overall market success, the Commission should not simply assume that there are significant competitive market problems that cannot be addressed via existing law or regulations. CES/NEMA are not alone in raising this issue. (*See, e.g.*, RESA Third Round Comments at 2 (Moreover, the workshops in this proceeding have not disclosed any specific problems that cannot be addressed by existing rules.").) Thus, the fundamental question remains whether there really is a need to formulate new regulatory "solutions" in the form of additional potentially burdensome regulatory requirements and obligations to perceived problems that can and have been addressed under the current, existing regulatory framework. In this proceeding, after three rounds of written Comments and three workshop meetings led by Commission Staff, **there remains no verifiable, actionable information presented to demonstrate significant problems with market function in Illinois**, and certainly no demonstration that such problems cannot be addressed through appropriate enforcement of existing law and regulations.

This is not to suggest that there are not some customer complaints and some problems that need to be addressed. However, customer complaints and problems need to be viewed in the context of a vibrant competitive market -- that already has a robust set of recently-enacted rules - - involving over three million participating customers who have collectively saved tens of billions of dollars.

Accordingly, at this time, CES/NEM respectfully reiterate that at this point there is no legitimate basis for the Commission to order any new or different regulation of RESs, particularly where doing so would create competitive asymmetry either between RESs and utilities or between different RESs. As CES/NEM have pointed out, the requirement for competitive neutrality was recently reiterated by the Illinois General Assembly's Joint Committee on Administrative Rules ("JCAR"), which stated: "JCAR believes that it was not the intent of the General Assembly to create an advantage for any specific group of the entities marketing electrical service in this State." (Oct. 14, 2014 JCAR Statement of Objection To and Prohibition Against Filing of Proposed Rulemaking re: Governmental Electric Aggregation, available on ICC eDocket in ICC Docket No. 12-0456 (Oct. 16, 2014 eDocket entry).)

Thus, the Commission should reject the various proposals advanced by CUB and ICEA, including, without limitation, the idea of requiring advance notice of rate changes for certain variable rate products (which requirement would not be consistent with Illinois law, would be competitively asymmetric rather than competitively neutral, and would likely favor certain categories of RESs over others thereby making markets less competitive rather than more so); the suggestion that historical data be required regarding variable rates (which requirement would be onerous for RESs, would be competitively asymmetrical rather than competitively neutral, and would appear to provide little or no practical information for customers); the idea of imposing requirements and initiating investigatory proceedings against so-called "one-star suppliers" (which, again, finds no clear basis in Illinois law, would be competitively asymmetrical rather than competitively neutral, and raises considerable concerns about due process rights and competitive neutrality); and the idea of materially modifying the structure of



the POR/UCB utility tariff (which finds no basis in Illinois law, is anti-competitive, and is well outside the scope of the Commission's Notice of Inquiry.)<sup>3</sup>

### **Response to New Questions Posed on April 28, 2014<sup>4</sup>**

#### **Variable Rate Offers**

2. Should the Commission adopt a requirement that the supplier provide the customer with a formula or method by which the variable rate is determined?

- On page 10 of its Reply Comments, RESA states that the Commission may want to consider providing guidelines as to what constitutes an adequate explanation of how variable charges are determined.

**Question for RESA:** Which specific guidelines would you recommend to the Commission?

**CES/NEM RESPONSE:** Although the sentiment in providing "guidelines" may be well intentioned, it is unclear whether such guidelines actually will provide clarity. As CES/NEM have previously explained, the Commission's existing rules specifically require that a sales contract for a variable rate product include "an explanation of how the variable charges are determined." (83 Ill. Admin. Code 412.110(d).) And both the PUA and the Consumer Fraud and Deceptive Business Practices Act contain provisions requiring disclosure of material conditions relating to competitive offers. (*See, e.g.,* 220 ILCS 5/16-115A(e); 815 ILCS 505/2EE.) Any existing "problem" with customer disclosures related to variable rate products can be addressed through these existing laws and regulations. The creation of additional

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<sup>3</sup> CES/NEM appreciate that CUB has modified its position regarding pricing information, indicating that it no longer favors establishing a "forward looking price 'band'" and instead favors provision of historical variable price information. (*See* CUB Reply Comments at 1.) However, for the reasons CES/NEM and other parties have previously explained, such a requirement would be of zero or very limited practical utility to consumers, while imposing significant burdens on RESs.

<sup>4</sup> Consistent with the ORMD April 28, 2015 email circulating the new questions, CES/NEM is offering comments regarding some questions directed to other parties. Failure to address any particular question should not be interpreted as assent to a particular view regarding such a question.

"guidelines" will add a layer of additional bureaucracy that seems more likely to sew confusion than bring clarity, potentially impose disclosure requirements associated with confidential RES information, and inhibit market innovation and new offerings for customers. (See CES/NEM Initial Comments at 4-5; CES/NEM Reply Comments at 5-6.)

### **Renewable or "Green" Energy Offers**

The ORMD April 28, 2015 document contains a lengthy set of questions to CUB, RESA, and ICEA regarding adding new columns regarding percentages relating to renewable and renewable energy credits, and questions apparently relating to certain examples of marketing green energy options and how customers discern information about such options.

**CES/NEM RESPONSE:** These questions appear to continue to imply that there is a problem with current market disclosures and descriptions relating to "green" and "renewable" offers. While some anecdotes have been advanced to suggest that this may have been a problem in individual cases, no evidence or information indicating a significant issue of general concern in Illinois has been presented. Further, the current statutory and regulatory provisions regarding disclosures and enforcement of consumer protections appear adequate. Accordingly, as an initial matter, CES/NEM caution against any assumption that a regulatory "solution" is needed.

The world of green and renewable energy is highly dynamic and fast-changing, not only because of accelerated technological change including so-called disruptive technologies, but also because of evolving customer awareness and preference. In that context, an attempt to pin down a workable definition at any given moment in time likely would stifle market development and customer preference rather than protect or encourage it. (See CES/NEM Initial Comments at 9-10.)



Finally, there is simply no reason to dictate to customers what is or is not "green" or "renewable" for purposes of their electric supply. For some customers, nuclear generation is "green," for some customers it is not. In circumstances where the government is making a policy decision about whether to offer some incentive or impose some burden on a certain type of generation source, having the government delineate whether that source qualifies as "green" or "renewable" might make sense.<sup>5</sup> However, here the issue is simply the functioning of a market, the participants in which are customers themselves, who get to make the decision about what generation sources they like or dislike. Imposing an arbitrary label in this circumstance -- a label that may be out of date in the near future -- does not advance transparency or customer protection.<sup>6</sup>

CES/NEM have previously indicated that they would not object to a column on the PlugInIllinois website that provides information regarding the percentage of renewable resources included in particular products. (*See* CES/NEM Initial Comments at 10-11.) Providing such information to customers on the website may be beneficial to customers, and would not appear to present a high likelihood of creating customer confusion. Multiple columns, however, may tend to heighten rather than lessen customer confusion. If a customer has a question about the

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<sup>5</sup> For example, the Illinois Power Agency Act's definition of "renewable energy resources" (20 ILCS 3855/1-10) is used in the PUA for purposes of regulating the RES Renewable Portfolio Standard ("RPS") obligations. (*See* 220 ILCS 5/16-115D.)

<sup>6</sup> The Commission appeared to adopt similar reasoning in ICC Docket No. 12-0456 in rejecting proposals to adopt a definition of "green" or "clean energy" products, stating: "The Commission does not share the parties' concerns that 'green or clean energy product' needs to be defined. The rule requires that a description of the green or clean energy product be provided. **The point of including this information on the Commission's website is to allow customers to compare the offerings. The purpose is not to render judgment on whether a product is actually green or clean, but to assist customers in making an informed decision.**" (ICC Docket No. 12-0456, June 11, 2014 Order at 10) (emphasis added).

renewable power information presented in a single column, the customer could always contact the relevant RES directly to ask questions.

Adding such a single column about renewable energy should not be dependent upon creating a Commission-endorsed definition of "renewable energy." (*See id.*) Information posted on the PlugInIllinois website is provided voluntarily by RESs who choose to have their offer information posted, and the lack of a constraining definition will allow RESs who choose to provide specific information about the relevant generation mix, which some customers may find useful. Of course, such information would need to conform to the requirement in that products marketed as "green," "renewable energy," or "environmentally friendly" relate to power and energy purchased separate from the RPS requirements in Section 16-115D of the PUA. (*See* 83 Ill. Admin. Code 412.190.)

#### **Defining Fixed and Variable Rates**

The ORMD April 28, 2015 document contains a set of questions to ICEA regarding what the minimum length of time should be for "defining" fixed or variable rates and whether certain regulatory events or changes in law would impact those definitions.

**CES/NEM RESPONSE:** CES/NEM have previously communicated their belief that consumers deserve adequate disclosures about, and should be educated regarding the type, duration, pricing and other terms of their contracts with RESs. (*See* CES/NEM Initial Comments at 11.) However, CES/NEM do not favor a Commission-imposed definition of "fixed" or "variable" rates. (*See id.* at 11-13; CES/NEM Reply Comments at 4-9.) The very fact that there is a debate about three-months versus six-months in "defining" a fixed or variable offer highlights the arbitrary nature of the attempt to "capture" through a guideline or regulation what is inherently a

dynamic, market driven situation where offerings to customers change based on a variety of factors that cannot and need not be predicted or controlled in advance.

This line of questions continues the theme of implying the existence of a systematic problem with the way rate offerings are communicated to Illinois customers. While some anecdotes have been advanced to suggest that this may have been a problem in particular cases, after multiple rounds of written comments and in-person workshop meetings, there is no evidence indicating that this is a significant issue of general concern in Illinois. The current statutory and regulatory provisions regarding disclosures and enforcement of consumer protections appear adequate. Consumers purchase fixed and variable rate products across other industries and have experience with and an understanding of the differing natures of these products as a result. Accordingly, CES/NEM caution against any assumption that a substantial number of Illinois customers would be assisted by further regulatory definitions.

To the extent that the Commission determines a definition of fixed and/or variable rates is necessary, the Commission should be mindful that a "fixed" rate offer very typically provides that the rate might be modified at some time during the contractual term as a result of events such as a change in law or a force majeure. Allowing such provisions in a fixed rate is entirely fair, particularly given that the rates that public utilities charge may change due to changes in law or force majeure events. These provisions also allow RESs to manage certain costs and risks that would otherwise be unhedgeable/unanticipated. (*See CES/NEM Initial Comments at 12-13.*)

## **Consumer Education**

2. Do you propose additional ways to increase traffic to PlugInIllinois.org?

- On page 5 of its Reply Comments, ComEd states that ICEA's proposal of Ameren and ComEd adding periodic bill messages to check PlugInIllinois.org for the latest information about the bundled and competitive rates should be rejected. ComEd stated that "RESs may raise issues with ComEd providing such a notice for all customers, as ComEd does not target subgroups of customers with these types of messages."

**Question for the suppliers:** Do you object to such periodic bill messages being included for all customers?

**CES/NEM RESPONSE:** CES/NEM would not have an objection to the utilities periodically including a generic bill message to all customers directing customers to the PlugInIllinois website as one available source for information about the Illinois competitive electricity market. In taking this position, CES/NEM reiterate that they do not agree with the manner in which the utility "price-to-compare" is portrayed on PlugInIllinois, and continue to advocate that the process for presenting the utility "price-to-compare" be revised. (See CES/NEM Initial Comments at 14-16.)

6. Should suppliers be required to post their residential offers on PlugInIllinois.org?

- On page 14 of its Reply Comments, RESA states that requiring suppliers to post their residential offers on PlugInIllinois.org "would ultimately diminish the value of the PlugInIllinois website by making it unwieldy."

**Question for RESA:** Would RESA also be opposed to a requirement that suppliers with residential offers post at least one of their residential offers on the PlugInIllinois.org website? Would the answer change if the requirement would be limited to periods of actual marketing activity by the supplier (e.g., during a direct mail, online, telesales, or door-to-door campaign)?

**CES/NEM RESPONSE:** CES/NEM reiterate their position that there should not be a formal "requirement" for a RES to provide information for posting on the PlugInIllinois website. There is no legal basis for "mandatory" reporting of RES offers and it is unclear why the Commission

would want to make that type of reporting mandatory. (See CES/NEM Initial Comments at 18; CES/NEM Reply Comments at 11.)

### **Cancellation/Rescission**

2. Should the Commission change the rescission period for customers with a smart meter? If so, what should the new rescission period be?

- On page 9 of its Reply Comments, ICEA states that “it may benefit the Commission to explore the experience of other states and utilities with accelerated switching to identify whether challenges, solutions, opportunities, and insights germane to Illinois’ situation may be gleaned from them.”

**Question for the suppliers:** Please describe your experiences with accelerated switching in other states, if any.

**CES/NEM RESPONSE:** CES/NEM continue to favor more expedited customer switching. (See CES/NEM Initial Comments at 19; CES/NEM Reply Comments at 12.) Customers have been led to believe that smart meter technology will enhance and streamline their experience with energy matters. (See, e.g., <https://www.comed.com/technology/smart-meter-smart-grid/pages/smart-meter.aspx>.) The notion of expedited switching fits well within that set of expectations.

Expedited switching -- like all customer switching -- should, to the maximum extent possible, be seamless and trouble free from the customer perspective. In some other states, such as Pennsylvania and Maryland, there have been some issues associated expedited switching. That outcome is detrimental not only to affected customers, but also to all other stakeholders in the relevant energy market.

The key to making expedited switching work is to make sure that there is an appreciation and "buy-in" from the utility about the importance of a good customer experience associated



with expedited switching. This will require the utility to expeditiously implement all necessary system requirements to ensure that each customer switch is executed smoothly. Consistent with the significant investment in smart grid technology occurring in Illinois, making the necessary and timely investments to update utility systems to accommodate expedited customer switching should be feasible.

### **Conclusion**

CES/NEM appreciate the ongoing efforts of the Commission, its Staff, and all stakeholders in this NOI process. CES/NEM intend to continue to participate, and therefore reserves its rights to make further comments in this NOI process and any additional rulemaking or other related process that may result.

Respectfully submitted,

#### **THE COALITION OF ENERGY SUPPLIERS**

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#### **THE NATIONAL ENERGY MARKETERS ASSOCIATION**

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**VERIFICATION**

Christopher J. Townsend, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Coalition of Energy Suppliers, that he has read the foregoing Joint Verified Fourth Round Comments of the Coalition of Energy Suppliers and the National Energy Marketers Association, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Christopher J. Townsend

Subscribed and sworn to me  
this 15 day of May 2015.





**VERIFICATION**

Stacey L. Rantala, being first duly sworn, on oath deposes and says that she is the Executive Director, Regulatory Services of the National Energy Marketers Association, that she has read the foregoing Joint Verified Fourth Round Comments of the Coalition of Energy Suppliers and the National Energy Marketers Association, that she knows of the contents thereof, and that the same is true to the best of her knowledge, information, and belief.

  
Stacey L. Rantala

Subscribed and sworn to me  
this 15 day of May 2015.





District of Columbia: SS

Subscribed and sworn to before me, in my presence,  
this 15 day of May, 2015

  
Philomina Gomes, Notary Public, D.C.

My commission expires June 30, 2019.